

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6067 OF 1994

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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GIRISHCHANDRA SURYAKANT SHUKLA  
VERSUS  
STATE BANK OF INDIA

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Appearance:

Mr.A.H.Mehta, for petitioner  
Mr.Pranav G. Desai, for respondent

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Coram: S.K. Keshote,J  
Date of decision:14.10.97

C.A.V. JUDGMENT

#. The petitioner, an officer of the respondent-Bank, filed this Special Civil Application and prayed for stay of further proceedings in the departmental enquiry instituted against him by respondent-Bank. Further prayer has been made for direction to the respondent-Bank to reinstate the petitioner in service of the Bank, subject to ultimate result of criminal proceedings and/or departmental proceedings against him with all backwages and all other benefits due to him on the basis of his having been continued in service without break.

#. The petitioner was placed under suspension in contemplation of departmental enquiry by respondent-Bank vide order dated 7.12.90. Vide memo dated 20.4.93, the petitioner was served with articles of Charges. The inquiry proceedings have been started, as per petitioner's own case, from 27.7.93. The petitioner, earlier to this Special Civil Application, filed Special Civil Application No.1094 of 1991 before this Court and prayer has been made therein for quashing and/or setting aside the order of suspension pending departmental enquiry, to pay the petitioner full salary and not only subsistence allowance and for various other reliefs. The said Special Civil Application came to be withdrawn by petitioner on 16th September 1992. In response to same charges, the petitioner contended that, CBI filed chargesheet against him in the criminal court and criminal case is pending. This chargesheet was filed by CBI on 25th March 1993, i.e. after initiation of departmental enquiry against him. Even after filing the chargesheet, the petitioner has continued to participate in the enquiry but after receipt of letter of respondent-Bank dated 15.4.94, intimating the appointment of new enquiry officer, he filed this Special Civil Application and prayer has been made as aforesaid.

#. Shri A.H.Mehta, learned counsel for the petitioner contended that the departmental proceedings and criminal proceedings are initiated simultaneously on the same charges and in case the departmental proceedings are not stayed, the petitioner will be required to disclose his evidence/defence in the departmental enquiry which may be utilized in the criminal case filed by CBI against him and to avoid this situation the departmental proceedings are required to be stayed. In support of this contention, the learned counsel for the petitioner placed reliance on decision of this Court in the case of Kusheshwar Dubey v. Bharat Cooking Coal Ltd., reported in 1989(1) GLH 26.

#. On the other hand, the learned counsel for the respondent-bank, Shri Pranav G.Desai contended that this writ petition is wholly misconceived. The only attempt of the petitioner is to delay departmental enquiry in which he is facing grave and serious charges. In this series, first attempt has been made by petitioner to stall the departmental proceedings by challenging the order of suspension and when he failed in that attempt, this Special Civil Application has been filed. It has next been contended that there is no legal bar in way of respondent to proceed simultaneously against the petitioner in respect to same charges, departmentally as well as in criminal Court and no exception to this rule can be taken. Lastly, the learned counsel for the respondent contended that law is now settled by the Apex Court in the case of State of Rajasthan v. B.K.Meena, reported in AIR 1997 SC 13 that the delinquent officer cannot claim as of right, this plea to stay the departmental proceedings. The departmental proceedings normally should not be stayed in case where the delinquent officer has been chargesheeted with grave and serious misconduct as otherwise it will amount to giving of premium to these persons for their act of perpetration of fraud on the Bank, causing wrongful gain to self and/or third parties and loss to the Bank and misuse of position, undue use of influence with colleagues and seniors by misrepresentation for wrongful gain to self/third parties.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. During the course of arguments, the learned counsel for the petitioner is unable to illustrate how the petitioner's defence or evidence in the departmental enquiry to be produced is likely to be utilized in the criminal case against him by CBI. He is further unable to illustrate how any prejudice is likely to be caused to the petitioner in case the departmental enquiry is proceeded simultaneously with the criminal proceedings against him. From the contents of Special civil Application also, I do not find any material, facts or grounds which show that in case departmental enquiry initiated against the petitioner for grave and serious charges and criminal proceedings are simultaneously proceeded against him, his defence is likely to be disclosed in departmental enquiry which will be utilized by CBI in criminal case. From the averments made by petitioner in Special Civil Application, I find that the petitioner has made a grievance that in case of other employees, the order of suspension has been revoked and

as such, discrimination has been made. Further grievance has been made that no departmental enquiry or criminal cases have been filed against other employees and as such, it is stated to be discriminatory treatment which has been meted out to him by the Bank. Further grievance has been made that in case both departmental and criminal proceedings are initiated simultaneously on the same charges, the same is impermissible in law in as much as, the petitioner's fundamental right guaranteed under Article 20(3) of the Constitution of India will be violated. Last grievance of the petitioner, in Special Civil Application is that the departmental proceedings are not in accordance with law and the regulations contained in the State Bank of India (Supervisory Staff) Service Rules and therefore there is a violation of principles of natural justice.

#. However, the learned counsel for the petitioner, during the course of arguments has not pressed any of the aforesaid grievances made by the petitioner in this Special Civil Application. His only contention is that in case departmental enquiry as well as criminal case are proceeded simultaneously the petitioner will have to disclose his evidence and defence in departmental enquiry which will be utilized in the criminal case initiated against him by CBI and as such, I do not consider to go on these grievances. I am making reference to the aforesaid grievances only to show that in the Special Civil Application though point has been raised as now contended by learned counsel for the petitioner, but necessary factual and legal foundation has not been furnished in support of this plea.

#. From the facts which have come on record, I find that the petitioner has made all the attempts to see that the departmental proceedings are stalled. In series of that attempt, the petitioner has firstly filed Special Civil Application No.1094 of 1991 before this Court in which suspension has been challenged and other prayers have also been made. However, what other prayers were there in that Special Civil Application is not made known to the court as neither of the parties have produced a copy of the said petition before this Court. That petition has ultimately been withdrawn by the petitioner unconditionally. That shows that the petitioner's attempt was nothing but to delay departmental proceedings in the matter where there are very very serious and grave charges against him. The petitioner, as stated earlier, has continued to participate in the enquiry for all the time and he has not raised any grievance therein on the count which is now sought to be made out in this Special

Civil Application.

#. The proceedings of the departmental enquiry have been produced on the record of this Special Civil Application by the petitioner. From those proceedings I find that the petitioner has made an attempt to delay the enquiry. He has not participated in the enquiry by keeping silent on all the material points. This pretext has been taken by him on the ground that if he speak out in the enquiry then he will be a witness against himself in the criminal proceedings. The grievance of the petitioner in this Special Civil Application is that the departmental proceedings and the criminal proceedings are initiated simultaneously on the same charges which is impermissible in law inasmuch as the petitioner's fundamental rights guaranteed under Article 20(3) of the Constitution of India will be violated as he will be required to disclose the evidence in the departmental enquiry which will be utilized in the criminal case by the CBI against him. However, it is no more res integra that there is no legal bar for both the proceedings, disciplinary and criminal to go on simultaneously. However, in certain circumstances it may not be desirable, advisable or appropriate to proceed with the disciplinary enquiry when criminal case is pending on identical charges. Reference in this respect may have to the following decisions of the Apex Court:

- (1) AIR 1988 SC 2118 - Kusheshwar Dubey v. M/s.Bharat Cooking Coal Ltd.
- (2) AIR 1960 SC 806 - Delhi Cloth and General Mills Ltd. v. Kushal Bhan
- (3) AIR 1965 SC 155 - Tata Oil Company Ltd. v. Workmen
- (4) AIR 1969 SC 30 - Jang Bahadur Singh v. Baid Nath Tewari

Reference may also be had to the latest judgment of the Honourable Supreme Court of India in the case of State of Rajasthan v. B.K.Meena (supra). In that case the point under consideration before the Hon'ble Supreme Court was as to under what circumstances disciplinary proceedings against a delinquent officer have to be stayed pending the criminal case filed against him on the same charges. Their Lordships of the Honourable Supreme Court held that staying of disciplinary proceedings in a matter to be determined having regard to the facts and circumstances of the given case and no hard and fast rules can be

enunciated in that behalf. The only valid ground for staying disciplinary proceedings is that "defence of the employee in the criminal case may not be prejudiced". This may be done in the cases of grave nature involving questions of facts and law. It means that not only the charges must be grave, but the case also must involve complicated questions of facts and law. More over, "advisability", "desirability" and "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. One of such considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as the criminal cases are concerned, it is well known that they go on endlessly where highly placed officials or persons holding high posts are involved. They hardly reach a prompt conclusion. That is the reality inspite of repeated advices and admonitions from the Courts. I may observe here that apart from the position of the person concerned and how far the accused is influential, in almost all the cases invariably judicial notice of the fact can be taken, that trial of criminal cases are delayed unduly. There may be variety of reasons for the same and one of the reasons is of heavy pendency of matters in the Courts. Their Lordships of the Honourable Supreme Court have further observed in the aforesaid case that if a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary proceeding even where disciplinary proceedings are held to be over at an earlier stage. The interests of administration demand that these proceedings are concluded expeditiously. It has been further observed that the interest of administration demands that undesirable elements are thrown out and any charge of misdemeanor is inquired into. The disciplinary proceedings are meant not really to punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of disciplinary proceedings, so that if he is not guilty of charges his plea should be taken into account at the earlier possible moment and if he is guilty he should be dealt with promptly according to law. The Honourable Supreme Court further observed that it is not also in the interest of administration that persons accused of serious misdemeanor should be continued in the office indefinitely, that is for long period awaiting the result of the criminal proceedings. It is not in the interest of administration and it only serves the interests of dishonest and guilty persons. It is not possible to enumerate various factors for and against the stay of disciplinary proceedings, but stay of the

disciplinary proceedings cannot be and should not be a matter of course. All the relevant factors for and against should be taken into consideration. The Honourable Supreme Court then observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the question is as to whether the respondent is guilty of such conduct, as could impose removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings where the offences registered against the petitioner are under Sections 120B, 467, 468, 471, 168 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1955, if such offences are established, what sentence should be imposed on him. The standard of proof, mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of the disciplinary proceedings pending criminal proceedings should not be a matter of course, but a considered decision. Even if disciplinary proceedings are stayed at one stage such decision may require reconsideration, if the criminal case gets unduly delayed.

##. So, it is now settled law that the stay of the disciplinary proceedings merely on the ground of pendency of criminal case cannot be a matter of course. The petitioner has been suspended in the present case in the year 1990 in contemplation of disciplinary enquiry. From this order the bona fide intentions of the bank are borne out. The Bank wanted to proceed against the petitioner, who has been charged for very serious and grave misconduct departmentally. But, as a criminal case has also been reported to the CBI for investigation, looking to the seriousness of the criminal involvement of the petitioner, the Bank had waited for reasonable time to see the outcome of the criminal case which had been lodged against the petitioner. The criminal investigation has not been promptly progressed as within a period of more than two and half years nothing has been done. Under the circumstances if the Bank is desirous of proceeding departmentally against the petitioner on the charges, I do not find anything unreasonable, illegal or mala fide in the aforesaid action of the Bank.

##. The petitioner after the service of the charge-sheet on him, has taken all the steps to get the enquiry delayed. Not only this, but for a period of one year from the date of initiation of the enquiry, the petitioner has not approached this Court or other available legal forum for staying of the departmental

enquiry. This petition has been filed by the petitioner before this Court on 25.4.1994, i.e. after a period of more than one year from the date of filing of the charge-sheet against him by the CBI in the criminal court. This delay caused in filing the present petition for such a relief is one of the important point to be considered. The only intention of the petitioner seems to be to see that in such serious charges enquiry may not be held by the Bank against him. Both the learned counsel for the parties, though specifically asked by this Court, are unable to say what is the stage of criminal case. The learned counsel for the Bank, though not very affirmative, tried to come out with a case that even charges were not framed against the petitioner in the criminal case, but in absence of any affirmative statement it cannot be accepted. The petitioner who is accused in the criminal case is also not in a position to say what is the stage of the criminal case. It was obligatory on the part of the petitioner, who has come to this Court for staying of the departmental enquiry on the ground of pendency of criminal case against him on the same charge, to disclose lasted stage of the criminal case. The silence on the part of the petitioner is another important point to be considered. It can safely be said that though the petitioner had made a grievance regarding disclosure of his evidence and use of the same in the criminal case against him, his only intention of filing this Special Civil Application is to delay the departmental enquiry initiated against him, so that he may continue to get the subsistence allowance for all the years. The Honourable Supreme Court in the case of the State of Rajasthan v. B.K. Meena (supra) has clearly laid down the guidelines for the Courts while dealing with the prayer of a delinquent officer for staying departmental enquiry on the ground of pendency of criminal proceedings against him. One of the considerations while dealing with such matters is that disciplinary enquiry cannot be and should not be delayed unduly. Another consideration is that the criminal case, may be for various reasons, dragged on endlessly. In the present case more than four years have passed after the service of the charge-sheet and about seven years have passed after the suspension of the petitioner and contemplation of departmental enquiry. We are in the year 1997. These facts clearly exhibit as to how these proceedings are delayed. If we go by the criminal case, then still it is at the initial stage as what the counsel for the Bank stated. Looking to the charges levelled against the petitioner and the evidences to be produced to prove those charges coupled with other facts of possible delaying tactics adopted by the petitioner this



Court has its reservation that the criminal case is not likely to be decided in near future.

##. Stay of disciplinary proceedings is a matter to be determined by the Court having regard to the facts and circumstances of a given case and as observed by the Honourable Supreme Court in the case of State of Rajasthan v. B.K. Meena (supra) no hard and fast rules can be enunciated in that behalf. The only valid ground for staying the disciplinary proceedings, as held by the Honourable Supreme Court in the aforesaid case, is that the defence of the employee concerned in the criminal case may not be prejudiced. The Honourable Supreme Court has given further guideline that this may be done in cases of grave nature involving questions of facts and law. That is, not only the charges must be grave, but the case must also involve complicated questions of facts and law. In the case in hand, no doubt that the charges levelled against the petitioner in the criminal case are also grave and serious as in the disciplinary enquiry. The learned counsel for the petitioner has failed to make out a case that the present matter involves complicated questions of facts and law. In absence of necessary ingredients as also material on record merely on the basis of the request of the petitioner, disciplinary proceedings cannot be stayed. The Honourable Supreme Court of India in the case of State of Rajasthan v. B.K. Meena (supra) has given a note of caution that one of the points to be considered while dealing with the question of staying the departmental enquiry is that the disciplinary proceedings cannot be and should not be delayed unduly. Mere statement made on behalf of the petitioner that if he discloses his defence in the disciplinary proceedings the same will be used against him in the criminal proceedings, is not sufficient for justifying the prayer of the delinquent officer for staying the departmental enquiry. If we go by the pleadings of the petitioner in petition, it would be clear that the prayer is made only on the ground that petitioner has to disclose his defence and that is likely to be utilized in the criminal proceedings against him. The substance of the grievance of the petitioner is that it is against the provisions of Article 20 of the Constitution of India. However, it is not so. I am satisfied in the present case that the petitioner is seeking the relief of staying the proceedings as a matter of course and without furnishing necessary facts and material to show that not only the charges levelled against him are grave, but the case also involves complicated questions of facts and law. If we go by the charge-sheet prima facie it cannot be said that in this

case complicated questions of facts and law are involved.

##. Looking to the facts and circumstances of the case I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged with no order as to costs. Interim relief, if any, granted by this Court stands vacated. However, looking to the fact that the petitioner is under suspension since 7.12.1990 and the charge-sheet has been issued to him on 25.3.1993, the respondent-Bank is directed to complete the departmental enquiry against the petitioner within a period of six months from the date of receipt of the writ of this order. It is expected of the petitioner to give all his cooperation in the matter. It is made clear that in case the petitioner makes any deliberate attempt to delay the enquiry then the Enquiry Officer may not have any hesitation to proceed in the enquiry ex parte against him.

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(sunil/prasad)